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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,596	10/19/2000	Lily Barkovic Mummert	YOR920000461-US1	8300

7590 11/01/2007

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EXAMINER	
TODD, GREGORY G	
ART UNIT	PAPER NUMBER
2157	

MAIL DATE	DELIVERY MODE
11/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	09/692,596	MUMMERT ET AL.	
	Examiner	Art Unit	
	Gregory G. Todd	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to applicant's amendment filed, 13 August 2007, of application filed, with the above serial number, on 19 October 2000 in which claims 1, 10, and 12 have been amended. Claims 1-20 are therefore pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al (hereinafter "Yang", 6,542,854) in view of Lim (hereinafter "Lim", 6,360,256), and further in view of Miller (hereinafter "Miller", 5,408,663).

As per Claim 1, Yang teaches a method for evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units comprising the steps of:

assigning a plurality of impact values, one impact value for each workload unit assigned for each of the plurality of computing systems, wherein said assigning of each impact value comprises determining the change in system expiration date should a workload unit be removed from the system (at least col. 5 line 1 - col. 6 line 19; CAE/UFW/CAW using workload definition information for sizing/ cost purposes); and

assessing the impact of moving the workload from a donor computer system to a recipient computer system based on said impact values (at least col. 33, lines 30-62; evaluating systems for suitable operation of workload).

Yang fails to explicitly teach a processing environment having a plurality of computer systems each having a plurality of assigned workload units. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Lim. Lim teaches distributing workload from a system (server) among other servers (at least col. 2, lines 1-5, 26-34; col. 4, lines 62-67). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Lim's system into Yang's system as Yang, while primarily concerned with the hardware of a single system, Yang also describes a plurality of user stations running the programs over a LAN (at least col. 33 line 64 – col. 34 line 6; col. 35 line 51 – col. 36 line 9), and thus with Lim, it would be obvious the capacity planning of Yang could be implemented with the workload balancing among a plurality of servers as in Lim.

Yang and Lim fail to teach assigning an impact number representing the number of days that the expiration date of the computer system would be changed with all other workload units remaining the same. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Miller. Miller teaches system task scheduling wherein tasks are given effort requirements (in hours/days/etc) to complete such tasks/workloads are inputted into a model and resource availability according to such

schedule is calculated accordingly (at least col. 9:3-68). All of the component parts are known in Yang, Lim and Miller. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, as all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results.

As per Claim 2. The method of Claim 1 wherein the change in system expiration date is determined based on system life expectancy (at least col. 5, lines 1-17; col. 6, lines 6-22; col. 7, lines 31-62; workload growth, utilization).

As per Claim 3. The method of Claim 1 wherein the change in system expiration date is determined based on capacity space (at least col. 5, lines 1-17; col. 6, lines 6-22; col. 7, lines 31-62; col. 15, lines 35-54; capacity).

As per Claim 4. The method of Claim 1 further comprising sorting said workload units based on said impact values into a sorted impact list (at least col. 26 line 45 - col. 27 line 5).

As per Claim 5. The method of Claim 1 further comprising altering the workload in the processing environment to change expiration dates of at least two of said plurality of computer systems (at least col. 25, lines 13-20).

As per Claim 6. The method of Claim 1 further comprising comparing the expiration date of each of said plurality of computing systems to at least one target planning date for servicing each of said plurality of computing systems (at least col. 33, lines 30-62).

As per Claim 7. The method of Claim 6 further comprising altering the workload in the processing environment to change the expiration date relative to the target planning date for at least two of said plurality of computer systems (at least col. 25, lines 13-20).

As per Claim 8. The method of Claim 6 further comprising the steps of:

creating a From list of computer systems for which the expiration date precedes the at least one planning date;

creating a To list of computer systems for which the expiration date is later than said at least one planning date; and

reassigning workload units from computer systems on said From list to computer systems on said To list based on said impact values (at least col. 6, lines 9-36; transferable workload for capacity planning).

As per Claim 9. The method of Claim 8 further comprising calculating new expiration dates for computer systems on said From and said To lists after said reassigning (at least col. 5 line 1 - col. 6 line 36).

As per Claim 11. The apparatus of Claim 10 further comprising at least one storage location accessible by the administrative processor for storing data relating to said plurality of computer systems (at least Fig. 7).

Claims 10 and 12-20 do not add or define any additional limitations over claims 1-9 and 11 and therefore are rejected for similar reasons.

Response to Arguments

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues Yang does not teach "evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units". In response to applicant's arguments, the recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to Applicant's arguments that Yang does not generally teach the dependent claim features. Examiner maintains that Yang, Lim and Miller teach these features as indicated in the above rejections. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is noted Applicant has not responded to rejection of independent claim 12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newly citedMinowa et al and Chen et al, in addition to previously cited Odhner et al, Quernemoen, Papaefstathiou, Abu Electronic Ata, MacFarlane et al, Chafe, Fong et al, Hartsell et al, Mummert et al, Flockhart et al, and Sanders et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G. Todd whose telephone number is (571)272-

4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd

Patent Examiner

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